

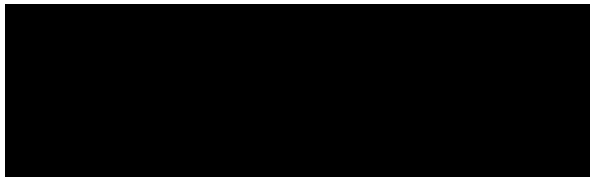
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U.S. Department of Homeland Security
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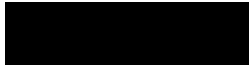
U.S. Citizenship
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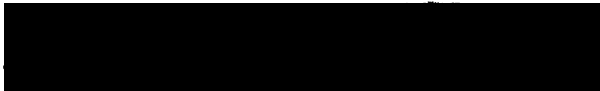
Office: CALIFORNIA SERVICE CENTER

Date: OCT 20 2004

IN RE:

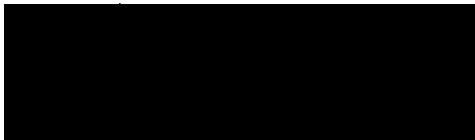
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

to *Mari Johnson*

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a multidenominational Protestant theological seminary. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as its vice president of Student Life and Enrollment Services (V.P.S.E.). The director determined that the petitioner had not established that the position of V.P.S.E. qualifies as a religious occupation, or that the petitioner is a qualifying tax-exempt religious organization.

On appeal, the petitioner submits new documents and arguments from counsel.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what

constitutes a “religious occupation” and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Richard J. Mouw, president of the petitioning seminary, describes the position offered to the beneficiary:

The primary and crucial responsibility of V.P.S.E. is the overall management of the Admissions functions of the institution. In selecting students, the Admissions office must decide if each student will be able to carry out the purpose and evangelical commitment required of the [petitioner’s] Community – trustee, faculty, staff and students. All of the teaching and administrative/management positions are restricted to persons who will affirm in writing the Statement of Faith of [the petitioning entity].

The V.P.S.E. is the chief admissions officer of [the petitioning seminary], serving the admissions needs of the School of Theology, Psychology and World Mission, as well as the Office of Continuing and Extended Education. . . .

We emphasize that admission to [the petitioning institution] depends on factors beyond the applicant’s academic record. These factors include theological development, Christian experience, Spiritual growth, call to serve and gifts for ministry. . . .

The V.P.S.E. also has responsibilities covering student life and services; financial aid (assessing potential success in Christian Ministry for scholarship students); ministry career planning and placement; chaplaincy services to students (including spiritual development and counseling); and participating in the overall leadership of the seminary as a member of the President’s cabinet.

The director requested additional information to “explain how the duties of the position relate to a traditional religious function.” In response, [REDACTED] asserts that the beneficiary “has significant responsibility for the spiritual life and program of the seminary,” and repeats and amplifies previously discussed details.

The director denied the petition, stating that “positions that are primarily administrative . . . in nature” do not qualify as religious occupations. The director determined that “the petitioner has failed to establish that the beneficiary’s proffered position is related to a traditional religious function.” On appeal, the petitioner submits background documentation relating to the religious purpose of the seminary, and demonstrating that “[a]ll teaching and administrative/management positions are restricted to persons who will affirm in writing the [petitioner’s] Statement of Faith.” We take this information into account, but it amounts only to a piece of the puzzle, rather than evidence that, by itself, is sufficient to overcome the director’s finding.

More broadly, the petitioner has shown that the fundamental purpose of the seminary is the preparation and training of Protestant clergy, which is surely a traditional religious function. The beneficiary, in this instance, is not merely an office clerk, primarily performing secular administrative tasks such as filing and accounting. Rather, the beneficiary is a top official of the seminary, charged with the task of ensuring the integrity of the admissions process (which includes evaluating the religious qualifications of prospective students). Viewed in this light, the beneficiary's work is integral to the operation of the petitioning seminary, and involves religious duties rather than purely or predominantly secular functions.

For the above reasons, we withdraw the director's finding that the beneficiary's position consists of secular administrative duties, rather than a qualifying religious occupation.

The other issue in this proceeding concerns the petitioner's tax exemption. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the employer qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools. The director denied the petition based, in part, on this classification.

It is overly restrictive to assert that only churches, classified under section 170(b)(1)(A)(i) of the Code, can qualify as religious organizations. Other classifications, while not *solely* limited to religious organizations, do not *exclude* such organizations. See Memorandum from [REDACTED] Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003).

In this instance, on appeal, the petitioner has submitted a letter from the Tax Exempt and Government Entities Division of the Internal Revenue Service, dated April 16, 2002, indicating that the petitioner is "a tax-exempt religious organization described in section 501(c)(3) of the Code." Such a letter would appear to rather definitively settle the issue of whether the Internal Revenue Service considers the petitioner to be a "religious organization." Supporting the letter is ample other documentation in the record, which establishes the pervasively religious nature and purpose of the petitioning entity.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.